IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

STEWARD HEALTH CARE SYSTEM, LLC, et al	CIVIL ACTION 13-405S
VS.	March 13, 2015
BLUE CROSS & BLUE SHIELD OF RHODE ISLAND	PROVIDENCE, RI

HEARD BEFORE THE HONORABLE LINCOLN D. ALMOND
MAGISTRATE JUDGE
(Motions)
(Corrected Transcript)

APPEARANCES:

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13 MARCH 2015 -- 11:00 A.M.

THE COURT: Sorry for being late. I had to attend a doctor's appointment with a family member, and it got delayed; and I didn't want to reschedule this.

All right. The matter before the Court today is Steward Health Care System, LLC, et al versus Blue Cross & Blue Shield of Rhode Island, Civil Action 13-405.

The matter is before the Court today on plaintiff's motion to compel production of documents by non-party 21st Century Oncology Services, LLC, and also their opposition to a prior objection or motion to quash filed by the recipient of that document subpoena. It's Document 56.

Can the attorneys present for this hearing identify themselves for the record, please.

MR. CORRENTE: Robert Corrente for Steward, and I'm joined by Mark Levinstein from Williams and Connolly.

MR. RUSSO: Mark Russo for 21st Century.

MS. ROCHA: Pat Rocha representing Blue Cross & Blue Shield of Rhode Island.

THE COURT: All right. Why don't I hear from plaintiffs first. I've reviewed everything that has been submitted.

MR. LEVINSTEIN: Good morning, your Honor.

THE COURT: Good morning, sir.

MR. LEVINSTEIN: Thank you for taking the time, and thank you again for taking time in December to help us initially with this.

As you'll recall, the objection was filed. We had that hearing. We thought we could work it out, and we weren't able to.

THE COURT: Yes.

MR. LEVINSTEIN: Basically, as you'll recall, this case is about Steward Health Care's effort to enter the Rhode Island market, and one of the first steps was to purchase Landmark Medical Center and its assets. And one of the assets of Landmark Medical Center was Landmark's 38 percent interest in the Southern New England Regional Cancer Center, which everyone refers to as SNERCC, so I will do so as well.

SNERCC was the cancer center located at Landmark; owned 38 percent by Landmark, owned 62 percent by Radiation Services, which became 21st Century. So I will refer to them as "21st Century," even though they weren't that during a lot of this time period.

One of the conditions of the Asset Purchase Agreement was that the Special Master was supposed to

purchase the 62 percent of SNERCC that was owned by 21st Century. And this deal between 21st Century and Landmark had been in existence since around 2002 when they applied for a Certificate of Need, and the facility had been operating since 2004. When the Special Mastership started, and Landmark went into this proceeding, SNERCC stopped performing well. And even though Landmark owned 38 percent of it, they weren't receiving any payments because it wasn't making enough money, was the report of 21st Century, which operated SNERCC.

So at the time that Steward made its deal to buy the assets, 21st Century was trying to purchase Landmark's interest. They wanted to buy the 38 percent that Landmark held.

So Steward comes along and wants the opposite to happen. They want Landmark to buy the 62 percent that 21st Century owns. And the numbers go back and forth, but basically 21st Century was offering $1.1 million to buy Landmark's 38 percent, or, when they discussed selling, they wanted to sell their 62 percent for $12 million.

So there was a bit of a disconnect; 38 percent for 1.1, or, if we're going to sell our 62 percent, it's $12 million, and there was lots of back and forth.

But the reasons relevant to this case primarily is if Steward had purchased Landmark, and finished, closed on that deal, at least one of three things could have happened: Landmark or Steward could have bought out 21st Century, bought the 62 percent; Landmark or Steward could have sold the 38 percent to 21st Century; or, Steward could have just waived the condition and been a 38 percent owner of this facility that would have continued to operate under the joint venture, under the LLC agreement.

We need to know, have these documents -- primarily because it's part of our damage claim. We need to figure out which of those three would have happened and, under the various scenarios, what the economic consequence would have been for Landmark Medical Center.

THE COURT: How do you figure out which of those three would have happened?

MR. LEVINSTEIN: Well, there were negotiations back and forth. Part of it is by looking at what the internal documents were saying. They were taking certain positions. There was lots of back and forth in the Special Mastership. We're going to have to have testimony about those possibilities, I mean. But, at a minimum, we need to know if we'd owned 38 percent, if

no deal had been made, what that would have been.

And it's possible we'll present three scenarios; you know, here's the price that it was clear they were willing to sell and we were willing to pay; here's the price we were willing to pay and they were willing to sell; or, here's what it would have been when we owned it. But, under any theory, there has to be some valuation of that asset.

So we've not asked for all the financial records of SNERCC; we've simply asked for annual financial statements and cash flows, the things that our experts need, they say they need in order to value this asset.

So what do we have in response? And we've asked for other things, other documents that relate to the business of SNERCC, what its contracts were with its payers, in order to figure out what its business was doing and how it would have done going forward.

THE COURT: Well, the documents you're just talking about now, those would be what? Document request number 6, possibly 5? I mean, there are lots of other documents you're asking for as well, aren't there?

MR. LEVINSTEIN: I can -- hold on.

THE COURT: Five goes to valuation of SNERCC. Six are annual financial statements and weekly cash

flow analysis for SNERCC from 2008 to 2014.

MR. LEVINSTEIN: Well, first --

THE COURT: I need to decide this in the context of your document request and specific request. I can't decide it in the context of, We need it for our valuation; We're asking for damages; One of three things could have happened, --

MR. LEVINSTEIN: Okay.

THE COURT: -- et cetera.

MR. LEVINSTEIN: First -- okay.

THE COURT: So I need to get into the weeds, unfortunately.

MR. LEVINSTEIN: I'm happy to do that, although, your Honor, there have been no objections that this is too burdensome. There have been no objections on those bases.

The objections are, one, We've produced all this; which simply isn't true. And the second objection is, We've got nothing to do with this case; which clearly is not true. So I can go through the request, but --

THE COURT: So if they say what they've produced or what's been produced in the public domain has already been produced in some other, and you say that's not true, then you must have received something that

you're saying is not fully compliant.

MR. LEVINSTEIN: This is what we've received. This is the total production. What we've received is mostly correspondence back and forth in the Special Mastership proceeding, and pleadings in the Special Mastership proceeding, and a few other documents; the operating agreement, a couple things. That's all we've received.

THE COURT: All right. Did the Special Master at some point ask 21st Century or its predecessor for financial information?

MR. LEVINSTEIN: Yes.

THE COURT: Some kind of an investigation --

MR. LEVINSTEIN: Yes.

THE COURT: -- or an analysis?

MR. LEVINSTEIN: He tried and ended up, as attached to the objections, getting very narrow financial information related to a few months. He got certain documents about patient records for a few months, to see what was going on in the business in those few months. It wasn't about valuation; it was about questions of whether there was, arguably, misappropriation going on, whether the people running -- whether 21st Century was not fairly compensating Landmark; were they over-expensing things.

So it was very targeted to three months in 2011. It's not what our experts need to value.

And what was produced, again, we don't have what was produced because it was given the Special Master. And although some people from Steward may have been able to see it, we don't have it, so I'm not -- just because it was produced in that proceeding, we don't have it and they haven't given to us today.

But there's lot of correspondence --

THE COURT: But that's not what you're looking for.

MR. LEVINSTEIN: Right. And there's lots of correspondence --

THE COURT: So what is it that you're looking for?

MR. LEVINSTEIN: Okay. Let's go through the request. First we've asked for, in request number one, documents about us. So we're looking for documents from internal documents about these negotiations, the positions they were taking, why they were taking them. If they don't have any documents that talk about our people, then there shouldn't be much there. And there's been no claim of burden, but we've received none of that.

Request number two, we're looking for internal

documents about SNERCC and its valuation. So after Steward didn't buy SNERCC -- I'm sorry. After Steward didn't buy Landmark and didn't buy the interest in SNERCC, Prime sold -- actually Landmark sold --

THE COURT: So what, so if I'm looking at number two --

MR. LEVINSTEIN: Yes.

THE COURT: -- accurately, then it would seem to me you're asking about the sale to Prime, but any potential sale, any potential suiter, Steward, anyone else who might have been interested in buying.

MR. LEVINSTEIN: The four transactions, I think. There was the original deal when they each got their percentages. Then there was the back and forth, either buying from Landmark or selling to Landmark. Then, after Steward dropped out, they bought the 38 percent from Landmark. And then they sold to other people, I don't know if it's the exact same 38 percent, but they sold an interest to Care New England and CharterCARE. So those are the only transactions that are involved.

THE COURT: So how do those advance the ball on either damages or causation?

MR. LEVINSTEIN: They show valuation. I mean, they discussed how much this was worth and how to value the assets. We think they got a ridiculously low deal

from Landmark, because Landmark was in receivership or Special Mastership and just wanted to get out and they took the $1.1 million. We think they sold that for a lot more.

So the valuation of what the 38 percent was worth and what they would have paid for it, that's part of that, or what it would have been worth if we owned it. So that's why we want the valuation documents.

The terms of the purchase from Prime, we have that. We actually have number three. It was in a document where that's disclosed.

THE COURT: Yes. That one, I'm aware of that one.

MR. LEVINSTEIN: Okay. Number four, again, we want to know that just the terms of what they sold it to Care New England and CharterCARE, because that relates to the valuation. That will show what it was worth and documents about how it was doing not very long afterwards from the purchase.

Five, again, documents that talk about the value. It's about valuation.

Six is simply the financial statements so we can understand the business and how it's done. It didn't do well in 2008 and nine, we've been told. But, just so you know, from what I can tell the financial

statements were never produced. Despite the fact that Landmark owned 38 percent, they couldn't get the basic annual financial statements, and because they needed to go to the judge to get an order, there was lots of back and forth, but those were never produced.

So all we're looking for is, there's no question it's not burdensome to produce their annual financial statements and their cash flow analyses. That's what our experts say we need in order to value a business.

THE COURT: All right. Requests seven through 12 appear to have a, or 13, appear to have a different twist.

MR. LEVINSTEIN: Yes.

THE COURT: So why don't you lay some context before we get into the weeds on those.

MR. LEVINSTEIN: Okay. Radiation Services owned multiple facilities in Rhode Island, and they negotiated contracts with payers that covered, we believe, multiple facilities. And the Special Master asked for the payer agreements and they just -- as far as I can tell they were never produced, because before we ever got to the end of that battle, Steward withdrew and things were dismissed as moot.

But there was a belief that when they did a deal with Blue Cross they may have paid or received

different reimbursement rates for different facilities, okay? And here's one facility, I own 62 percent; here's the facility, I own a hundred percent. I'm negotiating with you about rates. It's got lots of incentive to agree to different terms with the one that owns a hundred percent, I own a hundred percent of. I want more from the one I own a hundred percent; I want less from the one that I only own 62 percent of, because I'm not going to get as much of a benefit from that.

In addition, this was a facility associated with --

THE COURT: This doesn't make sense to me. I would assume if you negotiate you just negotiate to maximize your revenue as to each facility.

So unless, unless you're saying that there was some movement of rates that should have been provided at SNERCC to others so that they could fraudulently --

MR. LEVINSTEIN: No. We know --

THE COURT: Just from a pure economics standpoint, I'm not really getting what your point is.

MR. LEVINSTEIN: Well, one, we know that Blue Cross paid higher rates to hospitals that were associated with the major medical centers.

THE COURT: Well, isn't that sort of the norm in

this? Aren't there rates all over the board? Didn't we talk about that at prior hearings --

MR. LEVINSTEIN: That's what this case is about.

THE COURT: -- about rates being different from hospital to hospital depending on the type of hospital, the arrangement?

MR. LEVINSTEIN: That's what this case is about. The question whether that's reasonable or not and whether that's done because of reasons other than basic economics.

THE COURT: Well, you're saying it was done, back in the substance of this case you're saying it was done for anti-competitive reasons. But there can be legitimate business reasons why there are different rates.

MR. LEVINSTEIN: Absolutely. We just want to know what the rates were. We want to know if they were the same or they were different. These are radiation facilities that are pretty much the same.

THE COURT: But how is it relevant to this case?

MR. LEVINSTEIN: Because we were going to own 38 percent, but we might have owned a hundred percent. And if we'd owned a hundred percent, we wouldn't have been in that same negotiation. We wouldn't have been in a negotiation with Blue Cross with multiple

facilities. We would have been in an arrangement with Blue Cross just for SNERCC, because that would be a hundred percent owned by us.

THE COURT: Okay.

MR. LEVINSTEIN: So we want to know what --

THE COURT: So that's leverage that somebody who had multiple facilities --

MR. LEVINSTEIN: It would just be a different situation, your Honor. And so what the rates would have been if you're only negotiating for one, there's lots of situations in which you own multiple facilities, you negotiate with the other side, and you say I want X dollars, and you agree that it's done in a different way.

We believe that given the incentives, they were willing to take less at SNERCC than they were at other facilities.

If the documents don't show that, if there are no differences, there are no differences. If it's the same rates across facilities, it's the same rates across facilities.

THE COURT: Well, hold on. Before you get to that point, explain to me why it's relevant to the claims and defenses in this case.

MR. LEVINSTEIN: Because Blue Cross, as the

documents show, knows it's paying less to community hospitals. It knows those lower rates are threatening to put those hospitals out of business. And this is just one other aspect of Landmark's business. This is a facility at Landmark that --

THE COURT: How is that anti-competitive conduct towards Steward? You're saying they have this strategy of trying to put all community hospitals out of business?

MR. LEVINSTEIN: Your Honor, this is not for the point of claiming that that's a violation of the anti-trust law. It's a point of valuing the business. It's if we had acquired the facility, what rates could we have negotiated with Blue Cross if we were the ones representing SNERCC alone, because that's going to relate to the valuation of the facility.

In the financials it will simply show the numbers; it won't show the basis on which those revenues came.

We want the payer contracts so we can get some sense of the basis on which these numbers are being paid to SNERCC, and are they the same as being paid to other facilities. If we own SNERCC we can go to them and say, Look, you've been paying us --

THE COURT: This seems to have, and I apologize

for interrupting you.

MR. LEVINSTEIN: Go ahead.

THE COURT: But I just, I'm having a hard time seeing how this is actually going to be tried when you get to that point because there's layer after layer of, Well, if we were able to complete this deal, then if we got SNERCC we could have bought it, sold it, ran it. Then what would our rate have been. So SNERCC had a rate, but maybe we would have to negotiate a different rate, so we need to look at all of this.

It just seems to me, there just seems to be a lot of tentacles.

MR. LEVINSTEIN: I understand, your Honor. It's not a simple case. At the same time we would be owning -- even if we just owned 38 percent, we would have now been actively involved. We wouldn't have been like the Special Master who didn't have time to focus. We had a right to see the books and records.

So what we would have been able to cause the business of SNERCC to be, if we'd come in, owned the hospital, revitalized the hospital, generated more business for the facility, upgraded the facility in the way that we were upgrading the hospital; what the rates were with a major provider, who is defending the case, is an important aspect of what the case is about and

what our experts need to value the asset we were going to buy.

THE COURT: So, but you're looking for more than just the reimbursement rates that were negotiated for SNERCC? You want the reimbursement rates of other 21st Century facilities to show what?

MR. LEVINSTEIN: If they were different, if they negotiated them together, if they had different rates for different facilities; the theory behind what they were getting from Blue Cross. That's what we're asking for.

And again, what the case is about also, your Honor, is simply the fact that we know that when Steward tried to enter, Blue Cross did everything it could to prevent that; tried to stop the hospital conversions act from being changed. It tried to prevent Landmark from, the Special Master from selling to Steward. It opposed that.

Anything it could do, and this is one of the conditions was buying the 62 percent of SNERCC. They knew that was one of the things Steward had asked the Special Master to do, and that if he didn't do it, Steward could walk and might walk.

We believe there was a lot of incentive and likelihood that Blue Cross did anything it could to

prevent all the things that Steward wanted to happen.

They then took Landmark out of network -- even though they knew that would be devastating to Landmark -- because they thought it would increase the likelihood Steward would walk away from the deal.

We have a right to discovery to find out what involvement there was between Blue Cross and SNERCC and 21st Century related to this transaction.

It was clearly one of the conditions. One was Thundermist, and another was SNERCC. And we know there were discussions with Thundermist, and we want to know what there was with 21st Century. And these requests go to the relationship between Blue Cross.

THE COURT: Let's get in the weeds now and go through each of the requests, please.

MR. LEVINSTEIN: Number seven is just talking about the reimbursement rates that Blue Cross paid them, at their facilities, to see if they're different. If they're all the same, they're all the same.

Number eight is just documents that discuss the differences with respect to Blue Cross. If they're all the same, there won't be any. If there are no differences between what they're paid for doing the same thing at two different facilities, there will be no documents in response to eight. If there are

differences, we want to know why.

Number nine is simply trying to show how important Blue Cross was to them, documents sufficient to show the number of patients covered by; so we want to know what the relationship, importance of Blue Cross was to them.

Number 10 was, there's some question about whether -- because they owned a hundred percent of other facilities and they owned 62 percent of SNERCC -- did 21st Century try to get patients to go to other facilities instead of SNERCC. Okay? Follow me? I own a hundred percent --

THE COURT: I follow you.

MR. LEVINSTEIN: Okay.

THE COURT: I follow what you're saying, but I'm not following the connection to the claims and defenses in this case because the claims, you're not suing 21st Century here.

MR. LEVINSTEIN: It's a valuation. If we owned SNERCC, we wouldn't be sending patients somewhere else.

We're trying to find out why this facility was doing so badly. Its numbers were so bad it was worse -- we understand there was a Special Master procedure, proceeding. We understand that Landmark was down as a result. But SNERCC was down dramatically,

and we want to know why. And it relates to the valuation because, presumably, if we owned SNERCC, or we revitalized Landmark, that might have been reversed.

And if the answer is they didn't encourage patients to go anywhere else, there will be no documents. If there are documents showing they were trying to send patients somewhere else, there will be documents responsive to 10.

Eleven, there was a management contract. This is -- since 21st Century had the majority share, it ran the management of the facility and it paid itself first. So there were profits, well, there were revenues, of course, at the facility. But they were paying themselves; 21st Century was running it and paying 21st Century for being the manager and saying there's nothing left after that.

So we simply want documents that discuss the management contract and how they were computing how much they were owed, which Landmark was entitled to anyways. But in order to see if they were somehow increasing the costs and finding a way not to pay, because we're going to own 38 percent perhaps, we want to know if, in the future, whether that would generate profits. You know, how did the management contract work, how did they compute it, how were they able to

only pay themselves and give nothing to the person who owns 38 percent.

And if there are no documents that discuss that, then there are no documents. But if there are documents that discuss how they ran their management contract, that's what we're seeking there.

Number 12 is whether there are discussions about their fiduciary duty to the facility. Maybe they didn't write about that, but we're thinking there may have been documents where they said, Gee, we have a fiduciary duty to this partnership and so on and there are issues about how we're allocating expenses. If they don't write anything about that, there will be no responsive documents.

And 13, they tie, in the negotiations, the purchase of or the sale of their interest in SNERCC to whether they could open a facility in Rhode Island, in Bristol. Those were tied together, and we just want to know if there were discussions with Blue Cross at this point in time about the Blue Cross rates at Bristol and how those would compare to what they were getting.

THE COURT: Run that by me again.

MR. LEVINSTEIN: Okay. They offered, 21st Century offered to buy -- sorry -- offered to sell at 62 percent. One condition in that deal was --

THE COURT: Offered to sell at 62 percent to the Special Master?

MR. LEVINSTEIN: Correct.

THE COURT: Or Steward to the Special Master?

MR. LEVINSTEIN: Well, to the Special Master, but Steward was obviously in those negotiations because the amount was coming from Steward.

In those negotiations, one of the conditions of the deal was, that they proposed, that 21st Century proposed was this is all contingent on us getting our Certificate of Need to open our facility in Bristol. And we want to know if there were discussions related to that activity with Blue Cross at the same time, because we believe that's where some discussions may have taken place about Blue Cross's interest in Steward not being able to acquire the 62 percent of SNERCC. Because that was a condition of the deal, we think Blue Cross didn't want that to happen.

There may be no documents about this, but the thought is if there are discussions with Blue Cross about what they were going to pay at Bristol, we think those discussions may relate to the transaction involving Steward.

THE COURT: Okay. And what's the basis for that? Is there any factual premise for that?

MR. LEVINSTEIN: Just that those two transactions were linked in the documents; whether they were going to be able to successfully get that Certificate of Need, and open that facility in Bristol, was tied. That's the basis for that. It's the same time; it's contemporaneous; it's a setting in which they're talking to Blue Cross at the same time as they're negotiating with us over whether they're going to sell or buy the interest in SNERCC.

THE COURT: All right. Anything else you want to add before I hear from Mr. Russo?

MR. LEVINSTEIN: No, your Honor. I think that's it.

THE COURT: Thank you. Mr. Russo, sir.

MR. RUSSO: Thank you, your Honor.

THE COURT: You're welcome, sir.

MR. RUSSO: Your Honor, if it please the Court, I'd like to just provide a little context before going into the individual document requests.

THE COURT: Sure.

MR. RUSSO: First of all, I think it's important for the Court to focus on, my brother kept mentioning he might buy the 38 percent. The original Asset Purchase Agreement that Steward entered into with the Special Master for this particular transaction did, in

fact, indicate that they wanted to purchase the Special Master's interest in SNERCC.

We then had some back and forth with the Special Master on that issue, because we had a right of first refusal under the operating agreement, and they chose to amend their APA and make the contingency a purchase of the entire membership of SNERCC.

So I don't have any say in how this will be tried, but they withdrew and waived their, that component of their agreement to buy the 38 percent.

So we're just talking about a contingency, which we thought was strange at the time, asking the Special Master to have to go out and acquire an asset the Special Master didn't own. So I think that's important context.

Next, your Honor asked the question about the issue of, allegedly, mismanagement and financial information that was given, and my brother responded.

We've provided the documents in that. There was a whole procedure before the Special Mastership Court, Judge Silverstein, where he appointed an independent examiner who collected all the financial information, shared it with both sides, and there was a specific finding that 21st Century had done nothing of the sort of these allegations being made: Did you steer

patients; did you suppress revenues; did you not share profits. That was all hashed out at that point in time. And the reason that was done, your Honor, and I think it's very clear, is the Special Master and Steward were trying to pressure 21st Century to sell the 62 percent that you heard about. So those allegations were made at that time.

The next piece of context I'd like to provide for your Honor is a question that you asked twice and my brother answered, and that is when it goes to relevance, because that was our overriding objection to each of these things, even though we've tried under Rule 37 to provide some documents, and I'll go through that in a moment.

But one of the things that we took the position is, there is no relevance with regard to 21st Century, because you've made allegations in this case. You heard my brother say it; he wants to know if there was a connection between Blue Cross/Blue Shield and 21st Century not selling their 62 percent to the Special Master so that he could pass it on to Steward.

I would, I don't know what's happened in this case, but I would bet there's probably been some documents produced by Blue Cross/Blue Shield in this case. And the question you asked specifically were do

you have any facts to base a statement that there might be some connection that Blue Cross/Blue Shield said don't sell them the 62 percent, we don't want them here.

I'll represent to the Court, and I represented to my brother in the Rule 37 exchanges that we had, there are no such documents because there were no such communications. None of that ever happened. So based on relevance, none of this should be produced.

So with that context, I just wanted to go through --

THE COURT: Well, isn't the way that that would normally be handled is either, if you tender an objection you can accompany that objection with, And, by the way, there are no responsive documents.

MR. RUSSO: I did that, your Honor. I did that.

THE COURT: All right.

MR. RUSSO: So if we now go through the document request, I think, your Honor, and my brother properly characterized one through four. We view those requests as asking for the documents that were -- went back and forth during the negotiations.

There were negotiations that took place where there were discussions to sell the 62 percent to the Special Master, and we provided all that. And my

brother, in his papers --

THE COURT: Provided it to them directly, or it's been provided within some other proceeding and you think they have it?

MR. RUSSO: No, no. I've provided it. It's part of what I gave them. I gave them all the documents that went back and forth relative to negotiations between the Special Master --

THE COURT: Okay.

MR. RUSSO: -- and 21st Century. And what they say at Page 5 of their objection is, well, we want those documents to see what was the, what were the rationale behind those negotiations, what were those negotiations.

And I'll represent to the Court that there are a series of documents that begin in May of 2012 and go through June of 2012 which make it absolutely clear that the rationale from 21st Century was we will sell you the 62 percent, Mr. Special Master, but it has to be for a price that would enable us to acquire another facility so that we can continue to have a statewide network. And that's where we came up with the price, and we came up with a price of 12 million.

The Special Master, through Steward, came back to us at 8.5 million, and we worked over the course of

two months to try to narrow that, and, in fact, at one point got it very, very, very close.

So it wasn't a situation of Blue Cross/Blue Shield saying, like Darrelle Revis, No, no, no, not here. It was a situation which they didn't want to spend the money.

They have all the financial information. What my brother said with regard to five and six of the document request is, We only got for a couple of months.

Well, we've received a letter, which I've produced, from the Special Master, dated October of 2011, which outlined exactly what the Special Master wanted to see. It's October 28, 2011. It's in the stuff that we produced. And this was a request that was designed by Steward's then CFO, that they wanted to sample various months so that they could tell what this facility was capable of producing by way of revenues.

Now, let's get further into the weeds on five and six. It doesn't matter, our financial information really doesn't matter, because we're a stand-alone facility, which means we get different reimbursement rates from the payers. As soon as Steward would buy it, it would become part of a hospital, so they would be reimbursed on hospital rates. So again, none of

this would be relevant.

And, in fact, as directed by Judge Silverstein, he sat with Steward's CFO, our CFO, in a meeting at Landmark Hospital and went through all this, and they acknowledged, oh, yes, we would get reimbursed differently because we're going to be a hospital-based facility; this really doesn't apply.

So when my brother says they never got the payer contracts, what Judge Silverstein did is said, all right, I'm not going to require the payer contracts to be produced because some of that may be subject to confidentiality on other facilities, but give them the reimbursement rates and show that in the financials, which we gave them.

And they know full well that we got the same reimbursement rates at all the facilities. This is like revisionist history of the third time we've been through this with Steward, because they also objected to every step we took at Bristol. So none of this is new.

So our position on one through four is that the only thing that's relevant were the negotiations between the Special Master and 21st Century relative to the 62 percent, because that's what you amended your APA to acquire. And if there were any communications

between Blue Cross and 21st Century, that would have been the transaction; not some supposed transaction for 38 percent or some supposed partnership that -- my brother outlined three potential options. I don't know what he's talking about. There was only one potential option in their APA, and that was to purchase the 62 percent. So we've given all the documents relative to those negotiations.

Now, when we went to the financials, we've given you financial information that shows what that facility was capable of generating for revenue based on patient visits at that time. What the facility did three years later, after we took it over and ran it for three years after, has no relevance whatsoever to what it might have been worth to them. I have no idea what they would do with the facility, and they wouldn't even be reimbursed in the same rates.

Then, with regard to document requests seven through 12, I view, I view seven, eight, and nine really going to our reimbursement rate system as a stand-alone facility, which was uniform across all of our facilities, and I see it having nothing to do whatsoever with what Steward might tell a trier of fact in this case as to what profit they may have made from the facility, had they purchased it. It would be a

completely different reimbursement rate structure. It would be a hospital-based facility.

Then, Number 10, when I responded, I told my brother in that response, although we objected, there are no documents that show any efforts to redirect patients.

In the documents that I did produce, that same allegation was made during the Special Mastership, and there were three patients that they pointed out, after going through all the records, and we provided them the explanations as to why those patients had to go to different facilities. And that's all in what I produced, and that's probably why the independent examiner found that their allegations were completely and totally baseless at that time. And they're baseless again.

Number 11, 12 and -- Number 11 and 12 go to some allegations that, I don't know what it has to do with this case, that somehow we may have breached our duties by keeping management fees or breach of fiduciary obligations to our then partner. That has nothing to do with this case. And again, that was found to be completely and totally baseless in the Special Mastership, and I produced the documents to my brother, which demonstrate that.

And then finally, Number 13, negotiations with Blue Cross/Blue Shield in Bristol. Again, Bristol has nothing whatsoever to do with Landmark. I just don't see any relevance whatsoever. And I don't, I mean I can check with --

THE COURT: When he said that getting, that the sale was made contingent on getting approval to open in Bristol, is that accurate?

MR. RUSSO: When I exchanged my negotiations with the Special Master in May, we said that a closing, a closing would not take place until we received the CON in Bristol. That is accurate. And I produced all those documents.

But that's got nothing to do with what reimbursement rates we might receive at Bristol, if it ever got up and running. It's not even built. We're there still in the Supreme Court, battling us on a petition for writ of certiorari.

So I don't know what discussions we would have had with Blue Cross about a facility that hasn't even been built yet.

THE COURT: All right. Anything further, Mr. Russo?

MR. RUSSO: No, your Honor.

THE COURT: Does Blue Cross wish to be heard?

MS. ROCHA: No, your Honor. I'm just an interested observer.

THE COURT: That's what I thought.

MS. ROCHA: But I would echo Mr. Russo's comments on the lack of relevance.

THE COURT: All right. Anything you want to reply to briefly?

MR. LEVINSTEIN: Yes, your Honor. They haven't searched. We tried to have a meet-and-confer. We've heard, No responsive documents. They didn't say, We'll look; we'll conduct a search, and we'll tell you. They said, We're not going to look; we'll give you what's public. There's been no search whatsoever of any document that was not exchanged publically with Steward.

That's not how discovery works. We don't have to take what they said in their filings to the Special Master. We have a right to see what their documents show.

No internal documents whatsoever, not a single internal e-mail, not a single internal document, not a single document, and not even confirmation they've produced every document they exchanged with third parties; only the ones that were given to the Special Master. So that's one.

Second, just by -- if a hospital owns a hundred percent, it does not become hospital rates. A hospital wants to convert something -- that's one of the issues at Saint Anne's. I'm no expert on health care law, but you don't get higher rates just because the hospital buys the best of the interest, unless you change the facility. If you change the facility to meet hospital standards, then an ambulatory surgery center can become a hospital. But a separate cancer center doesn't automatically change rates because it becomes a hospital.

And I think if you look at the documents he submitted, he told you that the Special Master decided that payer contracts didn't have to be produced. That's just not true. I mean, I wasn't there, he was, but the Exhibit B to his pleading shows a letter to Mr. Russo asking for certain things that was subject to the motion to compel.

Item number four on the second set of items, under additional data requested, is copies of all payer contracts.

Then the order that he submitted as an Exhibit C says that motion is granted. So they were ordered to give those payer contracts.

Now, this thought that we keep hearing that

Steward saw it all or whatever? In fairness, I wasn't there. I don't know what someone might have looked at in some setting.

They weren't given to us. They were given to the Special Master with strict restrictions. Mr. Russo required that they could look at them and who could look at them, what was restricted. It was all in the context of Landmark and the Special Master getting those documents.

We don't have them, and this idea that there was some proceeding that decided all this; there's a one-sentence consent agreement with the guy who was hired to do the investigation, saying there are no findings adverse to 21st Century.

I have no idea what he did. I have no idea how far that went. It all was just dismissed by consent because Steward was gone, so it didn't matter anymore. And he relies this, that these have all been litigated and solved. Nothing was resolved in that Special Master proceeding. There was back and forth positions taken all different ways.

He also says that the only possibility was that Steward would have bought a hundred percent. No. That was a condition that Steward could waive. It was clear they were going to buy the 38 percent, because that was

part of the Asset Purchase Agreement. They, as part of the deal, said, Special Master, you've got to go out and buy that 62 percent, or we don't have to close; but if you can't get it at a reasonable price, we can either walk away or we can buy anyways.

And one of -- this is another thing. One of Blue Cross's arguments is these are the problems that caused Steward not to buy Landmark; it was these problems with buying SNERCC and other things. That's one of their defenses.

THE COURT: Yes.

MR. LEVINSTEIN: And our argument is, no, if he worked that with Blue Cross, it would have been got back to business and found some way to resolve this, either keeping the 38 percent, agreeing to a sale, or buying the rest of it. And so, again, that's what this case is about.

You know, I keep hearing, We've produced all that. If they say, We'll agree to conduct a search, and produce responsive documents, that's fine. But what I hear is, We object, and we're not looking, and we don't have any.

That's not how discovery works, in my understanding. They're supposed to go do a search, and if there's a request, I mean, for example, Bristol;

they said there would be no documents with Blue Cross because we haven't even finished the facility. Fine. They do a search, and they find there are no documents, there are no documents.

But that's not what we've been told. We've not been told anybody is going to look. We've not been told there's going to be any search, and we know there's been no search. We've simply been told, We object; because we say we're not going to find anything, we don't have to look. That's just not how discovery works, so.

THE COURT: All right.

MR. RUSSO: Your Honor, may I, just for the purpose of the record, it's attached to my objection as exhibit, I think it's Exhibit A, a February 2nd, 2015, response to the request where I indicate my objections, and, notwithstanding the objections, I detail what I produced. We put it on a CD and produced it all and we indicated where there were no documents.

THE COURT: All right. I'll take a look at it. I'm going to take the matter under advisement and go through this in more detail and get you a ruling as soon as possible. Thank you for your arguments.

Court will be in recess.

(ADJOURNED)

C E R T I F I C A T I O N

I, Denise P. Veitch, RPR, do hereby certify that the foregoing pages are a true and accurate transcription of the electronic recording in the above-entitled case.

/s/ Denise P. Veitch

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Denise P. Veitch, RPR

March 20, 2015

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Date